



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0342]

**Hours of Service of Drivers: American Concrete Pumping Association (ACPA);
Application for Exemption**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the American Concrete Pumping Association (ACPA) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. ACPA requests that concrete pump operators be allowed to use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The requested exemption would apply industry-wide to all concrete pump operators, concrete pumping companies and drivers who operate concrete pumps. Due to the nature of pumper operations, ACPA believes that compliance with the 30-minute rest break rule increases the risk of dangerous conditions on job sites. ACPA also asserts that concrete pump operators already take regular rest breaks throughout the typical day, depending on the work flow at the job site, so an additional 30-minute rest break does not enhance overall job safety. FMCSA requests public comment on ACPA's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2016-0342 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without

edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Telephone: (614) 942-6477; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0342), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2016-0342” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an

individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS regulations, including a provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break if they want to drive a CMV.

ACPA seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The requested exemption would apply industry-wide to all concrete pump operators, concrete pumping companies and drivers who deliver, set-up, and operate concrete pumps across the United States. ACPA currently represents more than 600 member companies employing over 7,000 workers nationwide. The exemption would be applied to all interstate concrete pumper trucks and their operators. Although many of the trucks operate intrastate and would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do routinely cross State lines.¹

ACPA requests the exemption for the following reasons: First, it argues that the mandatory 30-minute rest break increases the risk of dangerous conditions on job sites. A mandatory 30-minute rest break during which the concrete pump operator is considered to be "off-duty" would require the concrete pump to be shut down, and likely cleaned out.

¹ FMCSA does not have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. An FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

Stopping the flow of concrete through the pump creates the risk of introducing air in the pump's pipe system. When air gets in the pump's pipe system, the risk of hose whipping is created, which can injure not only the pump operator, but any personnel within reach of the hose.

Secondly, concrete pump operators already take rest breaks throughout the typical day that reflect the work flow at the job site, so an additional minimum 30-minute rest break does not enhance job safety.

ACPA states that when concrete companies expect a 9-hour job and it ends up being 2-3 hours longer, most of that additional time is spent waiting on concrete and doing nothing more than recirculating the concrete in the pump about every 10-15 minutes to avoid hardening and the introduction of air pockets in the pipe system. Only a small percentage of the concrete pump operator's time is spent driving. On average, concrete pump operators spend between 25-32% of their time driving during a shift, and average daily driving distances are 20-25 miles. Another 30-minute break limits the operator's ability to return the concrete pump to the shop within the daily 14-hour driving window.

According to ACPA, concrete is a perishable product. The perishable nature of concrete also creates difficult schedule coordination issues due to concrete being needed on a just-in-time basis. A concrete pump operator cannot plan the timing of the 30-minute break, as they cannot interrupt their work activity without the threat of failure – failure to accept and deliver concrete within its perishable limits and failure by violating their contracts. Once the ingredients of ready-mixed concrete have been combined, there is a brief window during which the product can be pumped (roughly 90 minutes before the concrete hardens). Should the concrete pump operator be required to take a 30-minute

off-duty break, it would cause a ripple effect on the ready-mix concrete trucks in line to supply the pump. Such a delay could cost thousands of dollars to rectify and could potentially violate a delivery contract. Once the concrete pump starts to receive a delivery, it must be completed, without disruption to conduct a safe and structurally sound pour.

Furthermore, ACPA adds that concrete pumping and placement companies work in collaboration with ready-mixed companies. Scheduling local business contracts in compliance with State and Federal regulations incorporating the 30-minute rest break is incredibly complicated, verging on impossible in cases when some concrete companies operate under different FMCSA rules. ACPA mentioned that the ready-mixed drivers were granted an exemption from the minimum 30-minute rest break provision.² As a result of this, if a concrete pump operator has worked 8 hours when the ready-mixed truck arrives, it is impossible for the concrete pump operator to take his or her 30-minute break since he/she has to place the concrete.

ACPA believes that granting this exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break. The Association states that the concrete pumping industry has a solid safety record, and that concrete pump operators already receive numerous breaks throughout the work day. The ACPA

² More precisely, section 5521 of the Fixing America's Surface Transportation (FAST) Act, exempts a "driver of a ready mixed concrete delivery vehicle" from all of the normal hours-of-service regulations, including the 30-minute break rule, who operates within a 100 air-mile radius of his/her normal work reporting location and meets certain other requirements [Pub. L. 114-94, 129 Stat. 1312, 1559, Dec. 4, 2015, codified at 49 U.S.C. 31502(f)]. In addition, FMCSA granted drivers of ready mixed concrete trucks an exemption from the 30-minute break requirement [80 FR 17819, April 2, 2015], which section 5206(b)(1)(A) of the FAST Act made into permanent law [129 Stat. 1312, 1537].

Operation Certification Program ensures, encourages, and educates the industry on safe pumping and placement procedures. These safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines.

A copy of the ACPA's application for exemption is available for review in the docket for this notice.

Issued on: October 17, 2016

Larry W. Minor
Associate Administrator for Policy

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